

WEST VIRGINIA
SECRETARY OF STATE
KEN HECHLER
ADMINISTRATIVE LAW DIVISION

Form #6

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OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

**NOTICE OF FINAL FILING AND ADOPTION OF A LEGISLATIVE RULE AUTHORIZED
BY THE WEST VIRGINIA LEGISLATURE.**

AGENCY: Child Support Enforcement Division TITLE NUMBER: 97

AMENDMENT TO AN EXISTING RULE: YES X, NO

IF YES, SERIES NUMBER OF RULE BEING AMENDED: 04

TITLE OF RULE BEING AMENDED: Interstate Income Withholding

IF NO, SERIES NUMBER OF NEW RULE BEING PROPOSED:

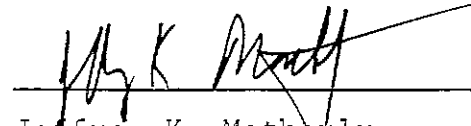
TITLE OF RULE BEING PROPOSED:

THE ABOVE RULE HAS BEEN AUTHORIZED BY THE WEST VIRGINIA LEGISLATURE.

AUTHORIZATION IS CITED IN (house or senate bill number) HB 2345

SECTION § 64-5-3 (a), PASSED ON 4/12/97

THIS RULE IS FILED WITH THE SECRETARY OF STATE. THIS RULE BECOMES EFFECTIVE ON
THE FOLLOWING DATE: 7/1/97


Jeffrey K. Matherly
Interim Director

FILED

JUN 3 4 13 PM '97

TITLE 97
LEGISLATIVE RULES
DEPARTMENT OF HEALTH AND HUMAN RESOURCES

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

SERIES 04
INTERSTATE INCOME WITHHOLDING

§97-04-1. General.

1.1 Scope - This legislative rule establishes procedures to extend the 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.

Non-Public Assistance (NPA): Child support cases where the custodial parent is not receiving public assistance.

Obligor: The person or the estate of the decedent who owes or is alleged to owe a duty of support; who is alleged, but has not been adjudicated, to be a parent of a child; or who is liable under a support order; also known as the absent parent, non-custodial parent or payor.

RURESA: Revised Uniform Reciprocal Enforcement of Support Act. (See URESA)

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.

URESAs: 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 - August 30, 1996.

1.5 Effective Date - July 1, 1997.

§97-04-2. 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 Support Enforcement Division will be involved in interstate withholding in 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 is required prior to processing the withholding. During the interview with the caretaker/obligee, the 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 legal assistant will determine from the Interstate Withholding Directory the information that the other state requires to process the withholding;

5. The 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 legal assistant will send the original package to the state in which the obligor resides, a copy to the Child Support Enforcement Division Central Registry. The Legal Assistant will also place a copy in the 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 Registry of the Child Support Enforcement Division and then forwarded to the appropriate regional Child Support Enforcement Division office.

2.6. The 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 Child Support Enforcement Division Central Registry will remedy any defect it can without the assistance of the requesting state. If the 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 Child Support Enforcement Division Central Registry will forward the documentation to the Child

Support Enforcement Division regional office 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 Office of the Child Support Enforcement Division will:

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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 legal assistant is to send the notice to Withholding Request from Another State to 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 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.

ANALYSIS OF PROPOSED LEGISLATIVE RULE

Agency: Child Support Enforcement Division
Subject: Interstate Income Withholding
CSR Cite: 97CSR13 (new cite, old site 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: None.

ABSTRACT

Brief Summary

This rule establishes procedures for enforcing other state's child support enforcement orders in West Virginia. The rule is being updated to reflect changes to the code. The title of the agency has been changed throughout the rule from "Child Advocate Office" to "Child Support Enforcement Division." Several small changes to the current rule are made. The rule now provides that even if all parties reside outside West Virginia, but the parent paying child support works in West Virginia, then the division may withhold wages. Throughout the rule "paralegal" is changed to "legal assistant." The rule is also amended to provide a process for determining and collecting arrearages from out-of-state child support judgements.

Section Summary

Section 2.3 has been amended to remove the \$25.00 application fee for out-of-state applicants who have gotten judgements and initiate the collection process in West Virginia.

Section 2.7 now provides that out-of-state cases are to be processed the same as in-state cases. After receiving all necessary paper work, the Division will begin withholding the parent's wages. If the parent is in arrears, a notice of withholding must be sent to the paying parent. A hearing before a family law master must be held regarding the arrearage. The same time frames which apply to in-state cases apply to out-of-state cases. If the requesting state is transferring the case back to West Virginia, the legal assistant shall obtain a copy of the original West Virginia order.

Section 2.8 provides that out-of-state cases submitted to the division are to be handled the same as in-state cases.

AUTHORITY

Statutory authority: W.Va. Code, §48A-2-23 provides that:

- (a) The child support enforcement division shall cooperate with any other state in the following:
 - (1) In establishing paternity;
 - (2) In locating an obligor residing temporarily or permanently in this state, against whom any action is being taken for the establishment of paternity or the enforcement of child and spousal support;
 - (3) In securing compliance by an obligor residing temporarily or permanently in this state, with an order issued by a court of competent jurisdiction against such obligor for the support and maintenance of a child or children or the parent of such child or children; and
 - (4) In carrying out other functions necessary to a program of child and spousal support enforcement.
- (b) The commission shall, by legislative rule, establish procedures necessary to extend the child support enforcement divisions' system of withholding under section three, article five of this chapter so that such system may include withholding from income derived within this state in cases where the applicable support orders were issued in other states, in order to assure that child support owed by obligors in this state or any other state will be collected without regard to the residence of the child for whom the support is payable or the residence of such child's custodial parent.

ANALYSIS

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

No.

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?

Yes.

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?

Yes.

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. Sentence drafting and editing make the rule very difficult to understand. Several terms are used which are not defined and underlines and strikethroughs are not done properly.

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.

VIII. OTHER.

Counsel has many concerns with the style and content of the rule. Several sentences are incomplete or have incorrect underlining and strikethroughs. Counsel recommends that a redrafted rule be submitted by the agency before the committee takes any action on this rule.

Senate Bill No. 224

(By Senator(s) Ross, Anderson, Macnaughtan,
Boley and Buckalew)

[Introduced March 3, 1997; referred to the
Committee on the Judiciary.]

10 A BILL to amend article five, chapter sixty-four of the
11 code of West Virginia, one thousand nine hundred
12 thirty-one, as amended, by adding thereto a new
13 section, designated section two, relating to
14 authorizing the support enforcement commission to
15 promulgate a legislative rule relating to interstate
16 income withholding.

17 *Be it enacted by the Legislature of West Virginia:*

18 That article five, chapter sixty-four of the code of
19 West Virginia, one thousand nine hundred thirty-one, as
20 amended, be amended by adding thereto a new section,
21 designated section two, to read as follows:

22 ARTICLE 5. AUTHORIZATION FOR DEPARTMENT OF HEALTH AND
23 HUMAN RESOURCES TO PROMULGATE LEGISLATIVE RULES.

1 §64-5-2. Support enforcement commission.

2 The legislative rule filed in the state register on
3 the thirtieth day of August, one thousand nine hundred
4 ninety-six, under the authority of section twenty-three,
5 article two, chapter forty-eight-a, of this code, modified
6 by the support enforcement commission to meet the
7 objections of the legislative rule-making review committee
8 and refiled in the state register on the twenty-eighth day
9 of February, one thousand nine hundred ninety-seven,
10 relating to the support enforcement commission (interstate
11 income withholding, 97 CSR 4), is authorized.

12

13 NOTE: The purpose of this bill is to authorize the
14 Support Enforcement Commission to promulgate a legislative
15 rule relating to Interstate Income Withholding.

16

17 This section is new; therefore, strike-throughs and
18 underscoring have been omitted.

2376

H. B. 2376

1 Bill-Child, Interstate (By Delegate(s) Douglas, Hunt, Compton,
2 Faircloth, Linch and Riggs)

3 [Introduced March 3, 1997; referred to the
4 Committee on Finance then the Judiciary.]
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8
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